

IN THE SENATE OF THE UNITED STATES.

DECEMBER 7, 1858.—Received from the Court of Claims.

DECEMBER 13, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

The Court of Claims respectfully presents the following documents as the report in the case of

JOHN PEEBLES vs. THE UNITED STATES.

1. The petition of the claimant and amendment.
2. Claimant's account, appointment by J. A. Cuthbert, and authority from same to claimant to act, marked A, B, and C, transmitted to House of Representatives.
3. Documents received from the Navy Department in answer to orders of the Court of Claims, numbered 1, 2, 3, 4, 5, 6, 7, transmitted to House of Representatives.
4. Depositions of Elam Phillips and David Barton, offered by the claimant, transmitted to House of Representatives.
5. Deposition of John A. Cuthbert, offered by the government, transmitted to House of Representatives.
6. Opinion of the Court.
7. Bill allowing claimant *twenty-five dollars*.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this seventh day of December, A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

JOHN PEEBLES vs. THE UNITED STATES.

To the honorable the Court of Claims of the United States :

The petition of John Peebles, a citizen of the State of Alabama, respectfully represents that he is by profession a surveyor, in which business he has had many years' experience. That on or about the

26th of December, 1853, Mr. John A. Cuthbert made application to your petitioner to execute certain surveying for the government of the United States, under his direction. Said Cuthbert represented himself as the agent of the United States, appointed by the Navy Department for the purpose of protecting the public lands of the government and the timber growing thereon from waste and depredation, and that his agency was confined to the southern district of Alabama. Said Cuthbert further stated that trespassers were constantly committing depredations upon the public lands by cutting down and removing the timber; that he was instituting prosecutions against such trespassers in all cases where he could ascertain them; that, in order to perfect the proof against the defendants on the trials in court, it was necessary to employ surveyors to go upon the lands and run out the lines of the precise tracts trespassed upon, so as to be able to testify to the same in court. Said Cuthbert then proposed to employ your petitioner in this service, and believing he was invested with full authority for that purpose, your petitioner concluded a contract with him upon the terms following; the same not being in writing, but verbal:

Said Cuthbert agreed to pay your petitioner the sum of one hundred dollars per month, without stating any definite time for which petitioner was to be employed, and also agreed to reimburse petitioner all his necessary travelling expenses while so employed, as well as the expense of chain carriers, axe men, and choppers, who might be employed by him in the surveys, of all which your petitioner was to keep, and did keep, an accurate account. In consideration of which payments to be made by said Cuthbert your petitioner agreed to give his entire time to said service; to run the lines of tracts trespassed upon in any part of said district when required by said Cuthbert, or under his authority; to keep memoranda of the same; to testify to the same on the trials in court; and to make settlements with the depredators according to his best judgment, and upon terms and conditions which were drawn up and furnished your petitioner in writing by said Cuthbert.

Your petitioner further states that, immediately after concluding said contract, he proceeded to the discharge of his duties, and was in the employ of said Cuthbert for the period of seven months; that he devoted his whole time to said service with strict fidelity and good faith; that at the two next succeeding terms of the circuit court of the United States he gave testimony both before the court and grand jury in sundry prosecutions for depredations upon the public lands. And during the whole of said service petitioner believes he gave entire satisfaction to said Cuthbert, as he never heard the least complaint of the manner in which he discharged his duties. At the expiration of the said term of seven months your petitioner presented his account to said Cuthbert for services rendered in pursuance of said contract, which account accompanies this petition, signed by petitioner, and marked A, and is for the sum of \$845 25. Said Cuthbert refused to pay said account, saying that he had no funds; and your petitioner then refused to work any longer under said contract.

Your petitioner is unable to say under what act of Congress the Navy Department, or Mr. Cuthbert, acting under its authority, employed him to perform said services. He supposed there was no doubt of said Cuthbert's authority. He was recognized here as the timber agent of the government. The prosecutions instituted by him against predators were numerous, and no defences, so far as your petitioner is informed, were set up on the ground of a want of authority either of law or from the Navy Department on the part of said Cuthbert. Your petitioner received from said Cuthbert a commission, which accompanies this petition, and is dated January 21, 1854, and is marked B.

Your petitioner would further state that he is informed and believes that said Cuthbert's contracts with other surveyors for like services have been recognized by the Navy Department and the head of the Bureau of Yards and Docks as of binding obligation upon the government. He therefore prays that the heads of these offices may be subpoenaed to testify before your honorable Court to that point.

Your petitioner further prays that subpoenas may issue to take the testimony of Elam Phillips, C. K. Godbold, and David Barton, citizens of the county of Mobile and State of Alabama, by whom all the facts necessary to support the claim of your petitioner can be fully and satisfactorily proved, to the end that judgment may be rendered in favor of your petitioner for the amount of his aforesaid account.

IN THE UNITED STATES COURT OF CLAIMS.

JOHN PEEBLES *vs.* THE UNITED STATES.

To the honorable Court of Claims:

The petitioner, by his attorney, respectfully represents: That leave having been granted by this honorable Court to amend the petition of the claimant (John Peebles) so as to allege the proceedings had in the case in the Navy Department—the same having been omitted in the original petition—he now states that application for payment of the claim of said Peebles, which is the matter in controversy in this case, was made to the chief of the Bureau of Yards and Docks of said Navy Department, and that it was refused on the ground that the service, as he alleges, was not authorized, and the account was not certified to be correct by Mr. Cuthbert, the agent of the department; all of which will appear on reference to the letters of Commodore Joseph Smith, chief of the Bureau of Yards and Docks of the Navy Department, dated the 6th and 16th of March, 1858, and herewith presented to the Court, and which it is requested may be received and filed in the case.

All of which is respectfully submitted by

J. F. POLK,
Attorney for John Peebles.

JOHN PEEBLES *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the Court.

This is a claim founded upon services alleged to have been rendered to the United States as a surveyor.

The petitioner alleges that on the 26th of December, 1853, Mr. John A. Cuthbert applied to him to execute certain surveying for the government, Mr. Cuthbert being the timber agent for the southern district of Alabama, and it being necessary to employ surveyors to run out the lines of the government lands; that Cuthbert and the claimant made a verbal contract, by which Cuthbert agreed to pay him \$100 per month and his necessary expenses for travel, chain carriers, &c.; that the claimant was to give his entire time to this service, to run the lines of tracts trespassed upon when required by Cuthbert, &c., and to testify to the same on the trials in court, &c.; that he was in the employ of Cuthbert for the period of seven months, and at two terms of the circuit court he testified in trials for depredations on public lands. His account amounted to \$845 25, which Cuthbert refused to pay, saying he had no funds.

The first important question in the case is, whether there was any such contract, as is alleged, between Cuthbert and the claimant.

David Barton testifies that Cuthbert "was to give the claimant a hundred dollars a month, and was also to pay all his expenses for travelling, chain bearers, axe men, &c. The contract was entered into on the 26th of December, 1853." * * * "I would state," he says, "that my reason for knowing the terms of the contract, &c., is that I was present when it was made and was called upon to witness it." Elam Phillips, after stating a conversation with Cuthbert, says: "I was afterwards told by Cuthbert that he had employed him (the claimant.) I do not know on what terms the claimant was employed. It was entered into sometime in the month of December, 1853."

It thus appears that Barton testifies positively that there was a contract between Cuthbert and the claimant, and states its terms. Phillips states that there was a contract, but is unable to state what its terms were. Upon this question, we have the statement of Cuthbert himself, contained in a letter from Cuthbert to the chief of the Bureau of Yards and Docks, which is produced in compliance with a request made by the complainant. A copy of that letter is as follows:

"WASHINGTON, *March 14*, 1857.

"DEAR SIR: Your communication of the 5th instant has been received. I have endeavored to recall to mind the material facts in relation to the claim of John Peebles against the United States, and I feel certain that my recollection of them is clear and reliable. The claim is fraudulent in every part.

"I engaged the Bradfords to survey lands in the county of Washington, in preparation for prosecutions that had been commenced. I had been in the county of Clarke, and had there seen a considerable number of ship spars hewn, but not yet hauled away, and I had

information that persons not known to me had been getting spars in another part of the same county. I engaged Peebles to go into Clarke county to ascertain the government land on which spars had been cut, and to survey them.

"I expected him to report what work he might do in a shape in which I could act on it, and to pay him the customary price for what work he might do. I did not enter into any contract to employ him by the month or to pay his expenses. In all cases when I employed surveyors I found it expedient to give them written authority, in order to prevent their being interrupted by trespassers, who might wish to prevent the surveys.

"Mr. Peebles reported to me one case of trespass where lightwood had been cut on the public lands. The lightwood was seized under my authority, and a prosecution was commenced and Mr. Peebles was summoned as a witness and failed to attend. This was the only case of which he ever gave me information, and he was never summoned as a witness in any other case by my direction, or within my knowledge. I remember well that, during the time covered by his account, I inquired of David Barton whether he knew where Mr. Peebles was, for I was surprised that he gave me no information about spars; and Barton told me in reply that Peebles was in his employment, hunting trespassers for him, Barton, to return as informer.

"In the middle or latter part of April, 1854, a raft of cypress logs was brought down Mobile river, which I was informed had been taken from government land. I engaged Peebles to go to the place and ascertain, by making a survey, whether the land from which they had been taken belonged to the government. I have no doubt that Peebles made this survey and the one above mentioned. He never reported any other survey to me. I have never heard of his making any other survey for the government. He never gave me any information in relation to trespasses except in the two cases above mentioned.

"He asked me for twenty-five dollars, saying that he wanted money to pay chain carriers, not presenting any account to me. I paid him twenty-five dollars, and he gave me a receipt, the language of which seems to favor his claim. I have no recollection why the receipt was written in this form, but I conjecture that it was so written at the request of Peebles with the design of entrapping me.

"I suppose that there is a balance due to Peebles on the two surveys above mentioned; but his account is fraudulent in toto.

"With high regards,

"JOHN A. CUTHBERT.

"JOS. SMITH, Esq.,

"Chief of the Bureau of Yards and Docks."

Mr. Cuthbert, in his deposition states that in December, 1853, he had an interview with the claimant, in which he gave him to understand that he was disposed to employ him as a surveyor in making surveys connected with the timber agency, but at that time he made no contract with him. In answer to a question whether he made a contract with the claimant for the survey of any lands belonging to

the United States in the southern district of Alabama, the witness answers as follows :

"Sometime in the early part of 1854, Mr. Peebles gave me information of a case of trespass by cutting the lightwood on government land in Clarke county, and I desired him to survey a section, promising to pay him the customary charge for surveying it. I also employed him to survey a section from which, as I had been informed, cypress trees had been cut by a man named Strand. This land was, as I understood, in deep swamps, and I supposed that finding the lines would be attended with much more labor than in common cases, I engaged to pay his chain carriers, besides allowing the regular fees of surveying.

"I believe that he executed the surveys in both of these cases.

"Also, in the last of July or beginning of August, 1854, I employed him to survey the lands in Washington county, on which indictments for cutting timber were then pending. He utterly failed to execute any part of this last contract. These were the only contracts I ever made with him for surveying, except as I will hereafter explain."

He also says : "I never, except in the instance stated in the answer to the preceding interrogatory, authorized Peebles at any time to incur expense on account of any matters connected with the timber agency."

To another question he answers : "In the summer of 1854, and I think in the month of June, I, as timber agent of the United States, paid to the said Peebles twenty-five dollars. He asked me for that sum without presenting any account, and I paid it to him in part satisfaction for the two surveys I have already stated that he made. I believe that fifty dollars would be a fair compensation for the two surveys. He never performed any other services for me as timber agent."

In his answer to the eighth interrogatory he says : "In my first interview with Peebles, mentioned in answer to a previous interrogatory, I had it in contemplation to employ a surveyor by the month, to make the surveys required for prosecutions recently commenced, amounting, I believe, to more than fifty, and I spoke to Peebles with that matter in my mind, but I made no contract with him." He also says : "I am aware that Elam Phillips has testified that I informed him that I had employed Peebles by the month. In this testimony Phillips has misunderstood, or he has misrepresented me. I remember that in answer to some inquiry from him I told him in general terms that I had seen Peebles and that I expected to employ him. I am perfectly sure that I did not tell him that I had employed Peebles by the month. If I had told him so, I should have said that which I knew to be false. Whatever may have been Phillips' understanding of my language, it is not the fact that I employed Peebles by the month.

The only evidence of the alleged contract which specifies its terms is contained in the testimony of Barton. This is met by the positive denial of Cuthbert that any such contract was made. The allegations in the petition, therefore, are not proved. It is upon the existence of such a contract that the claim is based, and the denial by Cuthbert

must be regarded as neutralizing the effect of Barton's testimony. The testimony of Phillips is merely that Cuthbert told him that he had employed Peebles, but he knows nothing of the terms of the contract, and this also is denied by Cuthbert. But even if Cuthbert had not denied it, the mere fact that Cuthbert had employed Peebles by no means sustains the allegations in the petition, and that he was employed to a certain extent is admitted by the solicitor throughout. Whatever services he did render, Mr. Cuthbert thinks would be sufficiently compensated by the sum of fifty dollars; and that sum, deducting twenty-five dollars heretofore paid him, is the only definite evidence of the value of his services, and of the relief to which he is entitled. For that sum, a bill will be reported to Congress for the petitioner.

A BILL for the relief of John Peebles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is directed, out of any money in the treasury not otherwise appropriated, to pay to John Peebles the sum of *twenty-five dollars* in full for his services as surveyor, performed under the direction of John Cuthbert, timber agent for the southern district of Alabama.

